



# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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David B. Cohen  
Mayor

Public Hearing Date: September 9, 2008

Land Use Action Date: TBD

Board of Aldermen Action Date: December 1, 2008

90-Day Expiration: December 8, 2008

DATE: September 5, 2008

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development  
Candace Havens, Chief Planner  
Alexandra Ananth, Senior Planner

SUBJECT: #276-08 BRIAN COOK/INVESTMENT PROPERTIES, LTD. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and for changes to a nonconforming use and structure, including two exterior wall signs at 552 COMMONWEALTH AVENUE, Ward 6, Newton Centre, on land known as Sec 61, Blk 3, Lot 22, containing approximately 12,944 sf of land in a district zoned MULTI RESIDENCE 1.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis, which may be useful in the special permit decision-making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will consider in its discussion at a subsequent working session.



Multi-tenant commercial building at 552-564 Commonwealth Avenue

## **EXECUTIVE SUMMARY**

The subject property consists of a one-story commercial building constructed in 1917 on the corner of Commonwealth Avenue and Chestnut Terrace. Over the years the multi-tenant building has served a variety of commercial enterprises including such uses as a tire store, a flower shop, and a market. Currently, a personal training establishment seeks to occupy the most easterly tenant space in the building, which was most recently occupied by a kosher butcher shop. Retail is not a "by-right" use in the Multi-Residence 1 (MR1) District; therefore, the petitioners (proposed tenant and property owner) request a special permit to allow a change from one nonconforming use to another.

The Planning Department does not expect the number of clients, parking demand, or hours of operation for the proposed use to have a more adverse impact on the surrounding neighborhood than the previous use or other likely uses of this first-floor space. The petitioner also proposes new signage for this tenant space. The Planning Department would recommend that the petitioner consider creating more unified signage for the entire multi-tenant building in order to upgrade the appearance of the property.



552 Commonwealth Avenue tenant site

### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

*In reviewing this petition the Board should consider whether:*

- *the proposed change from one nonconforming use to another would be substantially more detrimental than the previous nonconforming use to the immediate neighborhood;*
- *the site is an appropriate location for such use;*
- *the use as developed and operated will not adversely affect the neighborhood; and*
- *proposed signage is appropriate for the site.*

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property is located on the south side of Commonwealth Avenue on the corner of Chestnut Terrace. Most of the lots along Commonwealth Avenue in this area are zoned Multi-Residence 1 and consist of a mix of two-family structures and neighborhood commercial businesses. Other businesses in the immediate area include a health and wellness center, a bakery, and a kosher food market. The Newton Squash and Tennis Club is also located in the immediate area. The lots located behind Commonwealth Avenue in the surrounding neighborhood are zoned Single Residence 2 and generally consist of single-family residences.

### B. Site

The 13,000 square foot lot contains a one-story multi-tenant commercial building of approximately 6,000 square feet, built to the front property line. The building has frontage on both Commonwealth Avenue and Chestnut Terrace and contains five tenants that occupy spaces ranging in size from 699 to 1,356 square feet, including a pet grooming and supply store, a dental office, a dry cleaner, a barbershop, and a framing store. The building has five parking stalls located behind the building along a private way accessed from Chestnut Terrace. A personal training establishment is proposed to occupy the most easterly tenant space, which has a gross area of 850 square feet.

## III. PROJECT REVIEW

### A. Land Use

The petitioner has submitted a written description of the establishment, which indicates that services will be provided by appointment only. One personal trainer would work with groups of no more than four women during hour-long sessions; the maximum occupancy at any one time would be eight people (two trainers with two groups of up to four clients).

Proposed hours of operation are Monday to Friday 6:00 a.m. to 8:00 p.m. and Saturdays from 8:00 a.m. to 12:00 p.m. As noted in the Parking section, below, the Planning Department does not expect the number of clients, parking demand, or hours of operation for the proposed use to have a more adverse impact on the surrounding neighborhood than the previous use or other likely users of the tenant space.

### B. Building and Signs

The existing building predated the adoption of the City's Zoning Ordinance and is a legally nonconforming structure. However, besides new signage for this single tenant (*Get In Shape for Women*), the property owner is not proposing any external alterations to the building or site.

The previous commercial tenant had two separate wall-mounted signs located in the same band over the shop, one on each side of the door. The petitioner is proposing to replace the two old signs with two new signs of the same dimensions that are carved wood and will be nonilluminated. The Urban Design and Beautification Committee reviewed the proposed

signs on August 20, 2008, and approved the replacement signs as submitted. Although all of the tenants in the building have signs located in the same sign band, there is little consistency of style among tenants. As previously mentioned, ***the Planning Department recommends that the petitioner consider creating more unified signage for the entire multi-tenant building in order to upgrade the appearance of the property.***

C. Parking

Based on information submitted, the proposed service establishment has a parking requirement of four stalls  $[(850 \text{ sq. ft.}/300 = 3) + (2 \text{ employees on largest shift}/3 = 1) = 4 \text{ total}]$ . The previous use, a butcher shop required 5 stalls. Thus, the proposed use requires one less parking space than the butcher shop. As the property had multiple commercial tenants before the City adopted parking requirements for businesses, on-site parking is "grandfathered" and the proposed use is not required to provide required on-site parking spaces. (NOTE: Under Section 30-19 (c) (2)(a), if the change of use increases the



Parking lot across Commonwealth Avenue

*parking requirements for an existing use the petitioner would be required to provide required additional off-street parking spaces or request a waiver of certain parking provisions.)*

There are a number of parking options in the immediate neighborhood including a lot across Commonwealth Avenue, which contains eleven parking stalls including one handicap stall. Parking is allowed along this portion of Commonwealth Avenue and after multiple site visits, Planning Department staff confirmed availability of parking spaces in the immediate neighborhood at various times of the day. In addition, the proposed use may draw some of its clients from the surrounding neighborhood, including clients who may walk to the site. Thus, the Planning Department does not believe that the proposed use would create a parking problem in the immediate neighborhood.

IV. COMPREHENSIVE PLAN

The location of this proposed personal training facility in a Multi-Residence zone appears to further the goals of the *Newton Comprehensive Plan*, which generally encourages developments and uses that foster active neighborhood and village centers by providing services that complement existing ones and contribute to a sense of place.

V. TECHNICAL REVIEW

A. Technical Considerations –Dimensional and Parking Controls

The petitioner is not proposing to alter the exterior of the building in any way and needs no relief from either the dimensional or parking requirements.

B. Other Departmental Reviews

As the petitioner is not making any changes to the site Engineering Review is not required. The Urban Design and Beautification Committee reviewed and approved the proposed

VI. ZONING RELIEF SOUGHT

Based on the completed zoning review, dated July 10, 2008, the petitioner is seeking approval through or relief from:

- Section 30-21(a)(2)(a) for a change of one lawfully nonconforming use to another;
- Section 30-21(b) to alter the interior of a lawfully nonconforming structure and to change two lawfully nonconforming wall signs; and
- Section 30-24(d) for approval of a special permit.

VII. PETITIONER'S RESPONSIBILITIES

*Petition #276-08 is considered complete at this time.*

ATTACHMENTS:

**ATTACHMENT A:** Zoning Review Memorandum dated July 10, 2008


**ATTACHMENT B:** Vicinity map

# **Zoning Review Memorandum**

**ATTACHMENT A**

**Dt:** July 10, 2008

**To:** John Lojek, Commissioner of Inspectional Services

**Fr:** Eve Tapper, Chief Zoning Code Official  
Candace Havens, Chief Planner 

**Cc:** Michael Kruse, Director, Department of Planning and Development  
Jason Rosenberg, representing Investment Properties Ltd.  
Ouida Young, Assistant City Solicitor

**Re:** Nonconforming use in MR1

| <b>Applicant:</b> Investment Properties, Ltd.    |   |
|--|---|
| <b>Site:</b> 552 Commonwealth Ave, Newton Centre | <b>SBL:</b> Section 61, Block 3, Lot 22           |
| <b>Zoning:</b> MR1                               | <b>Lot Area:</b> 12,926                           |
| <b>Current use:</b> Vacant storefront.           | <b>Prop. use:</b> Personal Training establishment |

## **Background:**

The subject commercial building was apparently constructed in 1917 following issuance of Building Permit #2902, dated March 14, 1917. Over the years the building has served a variety of commercial enterprises including a tire store, a flower shop, and a market. At present, a personal training establishment seeks to occupy the most easterly space, formerly occupied by a kosher butcher shop. The other tenants in the building include Doggone-It (a pet grooming and supply store), a dental office, a dry cleaner, a barbershop and a framing store. Zoning for the site is MR1, which does not allow retail uses as-of-right. The applicant seeks a special permit to allow a change from one nonconforming use to another nonconforming use under Section 30-21(a)(2)(a).

## **Administrative determinations**

1. Lot 22 contains the subject commercial building and limited parking to the rear located in a private way accessed from Chestnut Terrace. Submitted plans show a parking layout consisting of 5 undimensioned parking spaces. The following analysis is based upon such plans and related information as submitted to date, referenced in Plans and Materials Reviewed, below, along with site visits.
2. *Section 30-9, Use Regulations for Multi-Residence Districts* establishes the uses allowed as of right and by special permit in the MR-1 zone. A retail service use is not among those permitted uses. Therefore Section 30-21(a)(2)(a) which governs non-conforming uses shall apply. The petitioner proposes to utilize the area formerly occupied by "Gordon and Alperin," a butcher shop, for an adult fitness training studio called "Get in Shape for Women." The proposed layout includes a main room divided into a waiting area, a strength equipment area, and a cardio equipment area. In the back of the unit are an enclosed

office and a handicapped-accessible half bathroom. The applicant has submitted a description of the establishment, which indicates that services will be provided by appointment only.

3. *Section 30-15, Table 1, Dimensional Requirements in Residence Districts and for Residential Use* establishes the applicable parameters for commercial development. As the subject building predates the adoption of the City's Zoning Ordinance in 1920, it is a legally non-conforming structure in an MR1 zone. However, as no external building alterations are proposed, no issues as to zoning relief for the structure are under consideration.
4. *Section 30-19(d)(10)* establishes the required number of parking stalls for a service establishment. The applicant has submitted proposed fit-out floor plans. The gross floor area derived from information provided by the petitioner totals 850. Based on submitted information, the proposed service establishment would require 4 stalls, [GFA: 850 sq. ft./300 = 3 and 2 empl. max. shift/3 = 1; total: 4]. The previous use, a butcher shop required 5 spaces [GFA: 850 sq. ft./300 = 3 + 4 empl. max. shift/3 = 2; total 5]. The proposed change in use results in a reduction of 1 space in the number of parking spaces required. All other tenants in the commercial building are proposed to remain the same. According to the applicant's submission of Polk's Newton City Directory, the subject property has had multiple commercial tenants continuously since at least 1925 well before the City adopted parking requirements for businesses on April 15, 1963. Therefore, it does not need to provide the total number of spaces required on-site. Under Section 30-19(c)(2)(a), if the change of use increases the parking requirements for a existing building, the applicant must provide the additional space(s) or request a parking waiver. In this case, the proposed new use requires 1 less space than the preceding use. Therefore, the applicant does not need a waiver of the parking requirements.

| Zoning Review – Change of Non-Conforming Use |  |   |
|--|--|---|
| Ordinance                                    | Description  | Relief  |
| §30-21(a)(2)(a)                              | Change of previous lawfully non-conforming use to another non-conforming use | Special Permit from Board of Alderman per §30-24            |
| §30-21(b)                                    | Alter interior of lawfully nonconforming structure                           | Special Permit from Board of Alderman per §30-24 and §30-23 |
| §30-21(b)                                    | Change of two lawfully non-conforming wall signs                             | Special Permit from Board of Alderman per §30-24 and §30-23 |

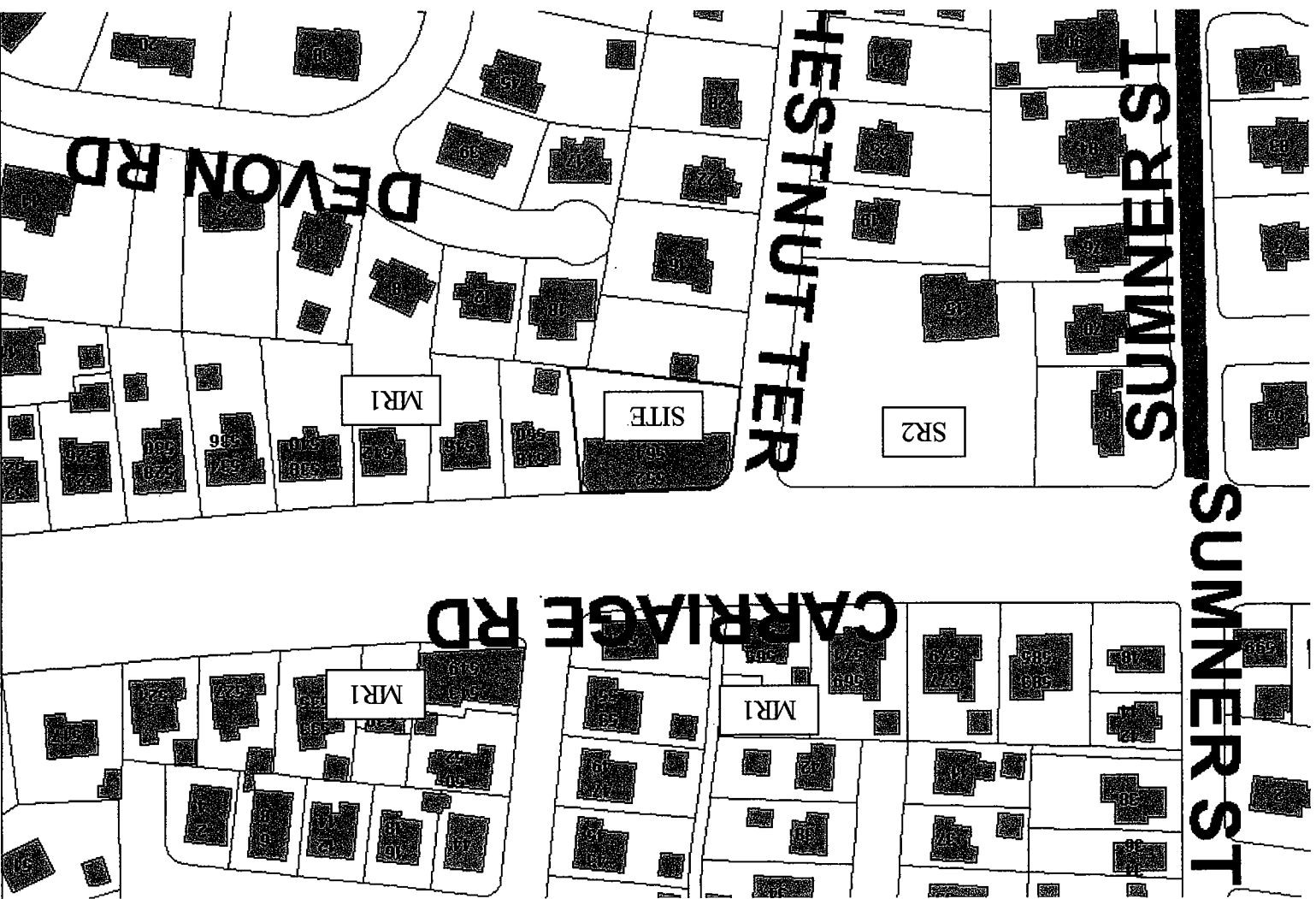
#### References:

- Existing and proposed parking calculations
- Copies of prior special permits on property
- Polk's Directory on prior tenants or occupants
- Letters from existing and former tenants of 552-564 Commonwealth Avenue
- Proposed sign package

#### Plans reviewed:

- "Demo and Proposed Plans" for 552 Commonwealth Avenue prepared by Ronald M. Ranere, Architect dated May 20, 2008
- "Building Plan & Elevations" for 552-564 Commonwealth Avenue prepared by Ronald M. Ranere, Architect and dated May 20, 2008 revised July 2008.

ATTACHMENT B



VICINITY MAP